

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAYSON TAYLOR, KRYSTAL WONGWON-REGIS,
ANGEL BENITEZ, VICTOR NDUBUISI, and
PAMELA ALEXANDER, on behalf of
themselves and others similarly situated,

Index No. 19-CV-7086

Plaintiffs,

-against-

NYC HEALTH + HOSPITALS and MITCHELL KATZ,
in his official capacity as President and Chief Executive
Officer of NYC HEALTH + HOSPITALS,

**PROPOSED
SECOND AMENDED
ORDER APPROVING
SENDING OF NOTICE
OF LAWSUIT WITH
CONSENT TO BECOME
PLAINTIFF FORM AND
QUESTIONNAIRE**

Defendants.

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Having reviewed the proposed Notice of Lawsuit against NYC Health + Hospitals filed on March 25, 2020 and having directed the parties to submit a proposed order to the Court that will govern the dissemination of the proposed Notice (Dkt. No. 35), the Court Orders as follows:

1. The Court adopts the attached Notice of Lawsuit against NYC Health + Hospitals for use in this case.
2. Notice of this lawsuit will be sent to all members of District Council 37, AFSCME, AFL-CIO (“DC 37”), who have worked in the titles set forth in Exhibit A of the Notice at NYC Health + Hospitals for any period since July 30, 2016.
3. By August 27, 2020, DC 37 shall mail the following items to each person who falls within the definition set forth in paragraph two of this Order, to the extent the information is maintained in DC 37’s records: a Notice of Lawsuit, a Consent to Become Plaintiff form, a Questionnaire, and a postage pre-paid return envelope addressed to H+H FLSA Collective Action, c/o Daniel Doeschner, Greenberg Burzichelli Greenberg, 3000 Marcus Ave, Ste 1W7, Lake Success, NY 11042 (“the Notice package”).

4. By September 11, 2020, Defendant H+H will provide to Plaintiffs' counsel, in a searchable excel spreadsheet, a list of the: (a) full name, (b) last-known home address, (c) personal e-mail address, and (d) home phone number of each person who falls within the definition set forth in paragraph two of this Order to the extent the information is maintained in H+H's PeopleSoft system. Plaintiffs' counsel will treat this information as confidential and will not disclose it to third parties.

5. By September 26, 2020, DC 37 shall mail a Notice package to each person who appears on Defendant H+H's list who was not included in DC 37's initial mailing.

6. Any person who wishes to opt into this lawsuit must complete the Consent to Become Plaintiff form and return it to Plaintiffs' counsel by mail postmarked on or before October 26, 2020, or by e-mail sent on or before October 26, 2020. Plaintiffs' counsel will retain copies of the envelopes as proof of postmark, and copies of e-mails as proof of date sent. Any potential opt-in plaintiff whose Consent to Become Plaintiff form is postmarked or e-mailed after October 26, 2020 will not be able to participate in this lawsuit.

7. If any Notice package is returned undeliverable, Plaintiffs' counsel will attempt to contact the addressee of the returned Notice package by e-mail or phone call to obtain an alternate address, so that counsel may resend the Notice package to the alternate address. If there is insufficient time to resend the Notice package by mail, or if the addressee permits receipt by e-mail, the Notice package may be e-mailed to the addressee and the addressee may return the Consent to Become Plaintiff form by e-mail to ddoeschner@gbglawoffice.com.

8. When the notice period ends, Plaintiffs' counsel will prepare a list of the people who timely returned their executed Consent to Become Plaintiff forms and the dates on which

each form was postmarked or electronically sent. Plaintiffs' counsel will file that list and the timely Consent to Become Plaintiff forms with the Court by November 30, 2020.

SO ORDERED.

Dated: _____, 2020

Gregory H. Woods
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAYSON TAYLOR, KRYSTAL WONGWON-REGIS,
ANGEL BENITEZ, VICTOR NDUBUISI, and
PAMELA ALEXANDER, on behalf of
themselves and others similarly situated,

No. 19-CV-7086 (GHW)

Plaintiffs,

(Jury Trial Demanded)

-against-

NYC HEALTH + HOSPITALS and MITCHELL KATZ,
in his official capacity as President and Chief Executive
Officer of NYC HEALTH + HOSPITALS,

Defendants.

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NOTICE OF LAWSUIT AGAINST NYC HEALTH + HOSPITALS

TO: All members of District Council 37, AFSCME, AFL-CIO, who have worked in the titles set forth in Exhibit A at NYC Health + Hospitals for any period since July 30, 2016.

DO NOT DISCARD – PLEASE READ THIS ENTIRE NOTICE

The purpose of this Notice is to: (1) notify you that a collective action lawsuit under the Fair Labor Standards Act (“FLSA”) has been filed against NYC Health + Hospitals (“H+H”); (2) describe who may be a plaintiff in the lawsuit; (3) inform you that you have the right to join the lawsuit; (4) instruct you how to join the lawsuit should you wish to do so; (5) advise you of how this lawsuit may affect your rights; and (6) inform you of your options for representation in the lawsuit.

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE FEDERAL DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK. THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF THE PLAINTIFFS' CLAIMS OR DEFENDANTS' DEFENSES. FURTHERMORE, RECEIPT OF THIS NOTICE DOES NOT INDICATE THAT YOU HAVE A CLAIM OR ARE ENTITLED TO RECOVERY.

1. Description of the Collective Action Lawsuit

On July 30, 2019, Plaintiffs Jayson Taylor, Krystal Wongwon-Regis, Angel Benitez, Victor Ndubuisi, and Pamela Alexander, on behalf of themselves and on behalf of others similarly situated, filed this collective action lawsuit against Defendants H+H and Mitchell Katz, in his official capacity as President and Chief Executive Officer of H+H. The Complaint alleges

that H+H, when compensating employees for performing overtime work at a rate of time-and-a-half, did not include certain contractual additions to the employees' rates like night shift differential or longevity in violation of the FLSA. Because H+H did not include these additions, plaintiffs allege that those employees were underpaid for their overtime work.

The case is in its early stages and does not have a trial date yet. To date, over 200 DC37 members/employees have opted-in to the lawsuit.

2. Composition of the Collective Action

Plaintiffs seek to sue on behalf of themselves and also on behalf of all members of District Council 37, AFSCME, AFL-CIO ("DC 37"), who have worked in the titles set forth in Exhibit A at H+H at any time since July 30, 2016 and who have worked in excess of 40 hours in any week.

3. Right to Participate or Not Participate in this Lawsuit

If you worked in any of the DC 37 represented titles set forth in Exhibit A in the last three years and worked in excess of 40 hours in a workweek, you have the right to participate in this lawsuit. You do **not** need to have any records of your wages or the hours you worked.

You are entitled to participate even if you were not working in this country legally at the time or are currently not working legally. You will not be asked about your immigration status, work permit, or immigration papers, and you do not need to be a documented worker in order to collect any monies recovered from Defendants in this lawsuit.

It is your own decision whether to join the lawsuit by signing the form and mailing it to Plaintiffs' counsel. Defendants are prohibited from retaliating against you in any way for joining this case, including taking any action based on your immigration status.

If you do not want to join this lawsuit, you do not need to do anything. You will not be included in this lawsuit and will not receive any money from it for your FLSA claim.

4. How to Join the Lawsuit

To join this lawsuit, you must sign, date, and print your name and address on the attached "Consent to Become Plaintiff" form and mail it to Plaintiff's counsel at the below address so that it is postmarked by OCTOBER 26, 2020, which is the last day that plaintiffs can join or "opt-in" to this lawsuit.

Plaintiffs' counsel's address is:

H+H FLSA Collective Action
c/o Daniel Doeschner
Greenberg Burzichelli Greenberg
3000 Marcus Ave, Ste 1W7
Lake Success, NY 11042
Telephone: (516) 570-4343

Fax: (516) 570-4348
ddoeschner@gbglawoffice.com

For your convenience, a self-addressed, postage paid envelope is enclosed. Please also fill out and return the enclosed questionnaire as well so that we have your contact information should we need to communicate with you. Plaintiffs' attorneys will file your consent form with the Court.

Should you have any questions, please contact Plaintiffs' counsel at the information above or Robert Burzichelli, counsel for Plaintiffs, at (516) 570-4343,
rburzichelli@gbglawoffice.com.

Please note that if you fail to return the completed form in an envelope postmarked by OCTOBER 26, 2020, you will not be included in this lawsuit.

5. Effects of Joining the Lawsuit

If you choose to join this lawsuit, you will become a plaintiff and will be bound by the Court Judgment or settlement, if any, of the parties involved. That is, when the Court decides whether H+H violated the FLSA, that decision will apply to all persons who joined the lawsuit. You also may be asked to provide testimony and information, including producing documents, to help the Court decide if the defendants violated the FLSA.

If you join this lawsuit, you may designate plaintiffs' counsel as your attorneys, and you will be entitled to communicate with, provide input, and receive advice directly from them. Plaintiffs' counsels are being paid on a contingency fee basis, which means that if there is no recovery, the attorneys will not charge you a fee for their service. If there is a recovery, plaintiffs' counsels will be paid their reasonable attorneys' fees, expenses, and costs, subject to the approval of the Court.

If you choose **not** to join the lawsuit, you will not be affected by any decisions, judgments or settlement rendered in this case, whether favorable or unfavorable. It is entirely your own decision to join this lawsuit.

6. Your Legal Representation if You Join

Along with Robin Roach, General Counsel, and Steven Sykes, of Counsel, District Council 37, 125 Barclay Street, Room 510, New York, NY 10007, the Law Offices of Greenberg Burzichelli Greenberg, P.C. represents the Plaintiffs in this lawsuit. They are handling this matter on a contingency basis, which means that if there is no recovery, the attorneys will not charge you a fee for their services. If there is a recovery, H+H will pay DC 37 and Greenberg Burzichelli Greenberg, P.C. their reasonable attorneys' fees, expenses, and costs, subject to the approval of the Court. These fees and costs will **not** be paid out of your recovery.

You may elect to be represented by Plaintiffs' counsel or choose your own counsel. If you choose your own counsel, you will be responsible for paying them.

Defendant H+H is represented in this action by the following counsel: The Office of James E. Johnson, Corporation Counsel of the City of New York, 100 Church Street, New York, NY 10007.

EXHIBIT A

AMBULANCE TECH
AMBULATORY CARE TECH
ASSOC. CORR. COUNS. LV I
ASSOC. CORR. COUNS. LV II
AST BIO-MED EQUIP TECH
AST PRINTNG PRESS OPERATOR
ASSOC. ENGINEERING TECH LV I
ASSOC. ENGINEERING TECH LV II
BEAUTICIAN
BEHAVIORAL HEALTH ASSOC
BIO-MED EQUIP TECH
BOOKKEEPER - LVL I
BOOKKEEPER - LVL II
BOOKKEEPER – LVL III
CASEWORKER
CASHIER
CENTRAL SERVICE TECH LI
CENTRAL SERVICE TECH LII
CERT PHYSICAL THERAPY AST
CHILDREN'S COUNSELOR
CITY CUSTODIAL ASSISTANT
CITY LABORER
CLAIM SPECIALIST - L I
CLAIM SPECIALIST - L II
CLAIM SPECIALIST – L III
CLERICAL ASSOCIATE - L II
CLERICAL ASSOCIATE - L III
CLERICAL ASSOCIATE - L IV
CLERICAL ASSOCIATE -L IVA
CLIENT NAVIGATOR - LVL I
CLIENT NAVIGATOR - LVL II
COMMUNITY ASSISTANT
COMMUNITY ASSOCIATE
COMMUNTY LIAISON WRK LI
COMMUNTY LIAISON WRK LII
COMMUNITY SERVICE AIDE
COMPUTER AIDE - LVL I
COMPUTER AIDE - LVL II
COMPUTER PRGRMR ANALYST TRAINEE
CONSTRUCTION MNGMNT ASSISTANT
CORRECTIONAL COUNSELOR
CONSULT PUB HLTH/SOC WRK
DENTAL ASSISTANT

DENTAL HYGIENIST
DIETARY AIDE
ELEVATOR OPERATOR
ENGINEERING TECH LVL I
ENGINEERING TECH LVL II
ENGINEERING TECH TRAINEE
ENROLLMENT SALES REP-L I
ENROLLMENT SALES REP-L II
ENROLLMENT SALES REP-L III
ENROLLMENT SALES REP-MDCR-L I
ENROLLMENT SALES REP-MDCR-L II
ENROLLMENT SALES REP-MDCR-L III
ENROLLMENT SALES REP AST
HEMODIALYSIS PAT CARE TEC
HOSP CARE INVESTIGATOR
HOUSEKEEPING AIDE
ILLUSTRATOR
INSTITUTIONAL AIDE
INSTRUMENT MAKER (RADIOLOGY)
INVESTIGATOR (CHS ONLY)
LICENSED BARBER
LOCKSMITH
MATERNAL / CHILDCARE TECH
MEDICAL EQUIP REPAIR TECH
MEDICAL EQUIP SPECIALIST
MEDICAL RECORDS SPECIALIST
MEDICAL WASTE TECH
MEDICINE-SURGERY TECH
MENTAL HEALTH ASSISTANT
MORTUARY TECHNICIAN
MOTOR VEHICLE OPERATOR
NURSE'S AIDE
NURSE'S AIDE (TRNSPRT ESCRT)
OCCUPATIONAL THERAPY AST
OFFICE MACHINE AIDE-L II
PARALEGAL AIDE - LVL I
PARALEGAL AIDE - LVL II
PATIENT CARE ASSOCIATE
PATIENT CARE TECH
PATIENT REPRESENTATIVE
PEER COUNSELOR - LVL I
PEER COUNSELOR - LVL II
PHARMACY TECHNICIAN
PLANT MAINT (HOSP)/TENDER
PRINTING PRESS OPERATOR
PSYCHTRC/SOCIAL HLTH TECH

PUBLIC HEALTH ADVISOR-L I
PUBLIC HEALTH ADVISOR-L II
PUBLIC HEALTH ASSISTANT
RADIO REPAIR MECHANIC
RADIO REPAIR TECH
REHABILITATION TECH
RESEARCH ASSISTANT
RESPIRATORY THERAPY AIDE
RESPIRATORY THERAPY TECH-L I
RESPIRATORY THERAPY TECH-L II
SECRETARY - LVL IIA
SECRETARY - LVL IIB
SECRETARY - LVL IIIA
SECRETARY - LVL IIIB
SERVICE AIDE
SPEC. CONSULT MENTAL HLT 2
SUPV CHILDREN'S COUNSELOR
SUPV PUBLIC HEALTH ADVISOR
SUPV LOCKSMITH
SUPV OF GARDENERS
SURGICAL TECHNOLOGIST LI
SURGICAL TECHNOLOGIST LII
TEACHER AIDE (DCC)
WATCH PERSON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANGEL BENITEZ, VICTOR NDUBUISI, and
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**CONSENT TO BECOME
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-against-

NYC HEALTH + HOSPITALS and MITCHELL KATZ,
in his official capacity as President and Chief Executive
Officer of NYC HEALTH + HOSPITALS,

Defendants.

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I am employed by NYC Health + Hospitals (“H+H”) or I was employed by H+H for some period of time since _____, worked over 40 hours in at least one week during which my regular shift included at least one hour for which I earned a night shift differential. I hereby consent to become a party plaintiff to the above-captioned action arising out of violations of the Fair Labor Standards Act, 29 U.S.C. section 216 (b).

PLEASE CHOOSE ONE:

- I designate Robin Roach, General Counsel; Steve Sykes, of Counsel, District Council 37, 125 Barclay Street, Rm. 510, New York, N.Y. 10007; and Robert J. Burzichelli, Greenberg Burzichelli Greenberg P.C., 3000 Marcus Avenue, Lake Success, N.Y. 11042, as my attorneys.
- I will retain my own attorney and I understand I am responsible for paying them.

Dated: _____

Signature

Print City, State where signed

Print name above and address below

**ATTORNEY-CLIENT COMMUNICATION & WORK PRODUCT
PRIVILEGED AND CONFIDENTIAL**

QUESTIONNAIRE

**THE INFORMATION ENTERED ONTO THIS QUESTIONNAIRE IS FOR
PLAINTIFFS' COUNSEL ONLY AND WILL NOT BE MADE PUBLIC**

Are you a DC 37 member? Yes / No (Circle one)

If Yes, Local Union No.: _____

Name: _____

Address: _____

Phone No.: _____

Email: _____

Employer: _____

Facility: _____

Title: _____

Check one:

Full-time: _____

Part-time: _____

Temporary: _____